IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

-

WRIT PETITION NO : 17245 of 2004

Between:

Shaik Jamsheed S/o.Shaik Jaburuddin,
R/o.H.No.1-3-29/L/62,Ramnagar Colony, Medak Town and District.

.... PETITIONER

AND

1 State Convenor, Diet Cet-2004 and Regional Joint
Director of School Education, Guntur, Camp at Office of the

Commissioner and Director of School Education, Saifabad,
Hyderabad.
2 M.Ganesh S/o.M.Narsimha,
R/o.Bhongir, presently residing at C/o.DIET, HAVELI GHANPUR, MEDAK TOWN AND DISTRICT,HYDERABAD.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction or writ specially writ of Mandamus directing the 1st respondent to allot a seat in Two year D.Ed. Course 2004-2006 under NCC quota by declaring the action of the Respondent in not giving the seat contrary to Instruction 06 (D)(4) of Instruction Booklet for DIET Common Entrance Test 2004 as illegal, arbitrary, violative of Act 14 of Constitution of India and also violative of Principles of natural justice and pass such other order or further orders as this Hon'ble Court may deems fit and proper.

Counsel for the Petitioner: MR.RAJ KUMAR RUDRA

Counsel for the Respondent No.1: GP FOR SCHOOL EDUCATION

Counsel for the respondent No.2: Mr.V.Hari Haran

The Court made the following :

ORDER:

Petitioner who applied for a seat in D.Ed course for 2004-2006 under NCC quota filed this petition questioning the admission granted to the second respondent in preference to him, on the ground that he is better qualified in the N.C.C than 2nd respondent.

2. Basing on instruction No.6D of the instruction booklet for DIET Common Entrance Test, 2004, issued by the first respondent, reading:

> **Reservations of seats for NCC/Scouts and Guides/Sports Candidates**: For NCC, Scouts/Guides and sports reservation will be done as per Government rules. In case of absence of candidates under this quota, the seats shall be treated as unreserved.
>
> For selection under NCC reserved quota the following priorities shall be considered.
>
> 1. NCC `B' certificate holders who participated at international level for youth exchange programme.
> 2. NCC `B' certificate holders who participated at national level
> 3. NCC `B' certificate holders who participated at state level
> 4. For the remaining seats if any, the Candidate shall be selected as per the following priorities.
>
> a. NCC-B certificate during intermidate etc, plus NCC – C certificate obtained subsequently
>
> b. NCC-B certificate obtained during intermediate etc;
>
> © NCC-B and C certificates obtained after the completion of qualifying examinations

d. NCC-B certificate obtained subsequent to qualifying examination.

Note: 33.33% of seats under all categories, that is OC, SC (A, B, C & D), ST, BC (A, B,C & D) and each of special categories are reserved for woman.

learned counsel for the petitioner contends that since the petitioner obtained NCC `B' certificate in intermediate level and NCC `C' certificate in Degree level, Clause 4(a) extracted above applies to the petitioner and 2nd respondent who obtained NCC B certificate in 2003 and who falls under clause 4(c) category was given admission in preference to the petitioner, and so the same is arbitrary and contrary to the notification and hence admission granted to the second respondent is liable to be set aside and petitioner is entitled to admission.

4. The contention of the learned Government Pleader is that 1st respondent has to follow the grading given by the NCC Directorate of A.P and the same is made clear in the notification dated 30.7.2004 published in Newspapers, copy of which also is filed by the petitioner along with the writ petition, and accordingly the names of all the students claiming reservation under NCC category were sent to the NCC Directorate of A.P and as per the grading given by the NCC Directorate of A.P, the second respondent was given admission in preference to the petitioner. It is his contention that even according to the allegations in the affidavit of the petitioner, his rank is 65910 and the rank of the second respondent is 22096. He relied on G.O.Ms.No.155, dated 17.11.2000 issued by the Secretary to Government relating to 1% reservation for NCC category for admission into Engineering Colleges in support of the contention raised by him.

6. In reply, the contention of the learned counsel for the petitioner is that since the above referred G.O.Ms.No.155, dated 17.11.2000 relates to admission into engineering colleges, and since notification dated 30.7.2004 relied on by the 1st respondent is subsequent to the issuance of instructions booklet which is dated 23.2.2004, 1st respondent is bound by the instructions given in instructions booklet which is earlier, and cannot take shelter under the subsequent notification issued on 30.7.2004, or the G.O.Ms.No.155, dated 17.11.2000 to non suit the petitioner.

7. It is no doubt true that as per instruction 6-D, extracted above mentions the procedure that would be adopted in filling up the seats reserved for NCC etc. students. But the fact remains that by a subsequent notification dated 30.7.2004 all the students were informed that the names of the persons i.e., students cleared by the concerned authorities only would be called for counselling. Since the petitioner himself produced a copy of that notification, it is clear that he is very well aware of that notification, even by the time he filed this petition. But, for reasons best known to him, he did not either challenge the said notification as being contrary to the Instruction booklet issued earlier, nor did he make the concerned authority i.e., the Directorate of N.C.C of A.P, a party to the petition to enable the Court to find out on what basis the gradation list was prepared by it, in respect of the students having NCC certificates. From the documents produced by the first respondent along with his counter affidavit, it is seen that the name of the second respondent is placed above the name of the petitioner in the list sent by the Directorate of NCC.

8. In the above circumstances, it cannot be said that first respondent had preferred second respondent arbitrarily and denied the seat to the petitioner more so because

the fact that the rank of the second respondent is higher to that of the petitioner is not disputed. In these circumstances, petitioner is not entitled to any relief.

9. Hence the writ petition is dismissed. No costs.

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C.Y.SOMAYAJULU, J

Dated : 11.3.2005

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To

1 State Convenor, Diet Cet-2004 and Regional Joint
Director of School Education, Guntur, Camp at Office of the

Commissioner and Director of School Education, Saifabad,
Hyderabad.
2 2CCs to G.P for School Education, High Court Bldgs,Hyd.(OUT)

3 2 CD copies.